

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 17-CR-100-WMC

DAVID TJADER,

Madison, Wisconsin

July 2, 2018

Defendant.

1:09 p.m.

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STENOGRAPHIC TRANSCRIPT OF SENTENCING  
HELD BEFORE U.S. DISTRICT JUDGE WILLIAM M. CONLEY

APPEARANCES:

For the Plaintiff:

Office of the United States Attorney  
BY: ELIZABETH ALTMAN  
Assistant United States Attorney  
222 West Washington Avenue, Suite 700  
Madison, Wisconsin 53703

For the Defendant:

Jones Law Firm  
BY: WILLIAM R. JONES  
P.O. Box 44188  
Madison, Wisconsin 53744

Also appearing: DAVID TJADER, Defendant  
MARIAH JOHNSON, U.S. Probation Officer

Jennifer L. Dobbratz, RMR, CRR, CRC  
U.S. District Court Federal Reporter  
United States District Court  
120 North Henry Street, Rm. 410  
Madison, Wisconsin 53703  
(608) 261-5709

1 (Proceedings called to order at 1:09 p.m.)

2 THE CLERK: Case No. 17-CR-100-WMC-1, *United States of*  
3 *America v. David Tjader*. Court is called for a sentencing.

4 May we have the appearances, please.

5 MS. ALTMAN: Good afternoon, Your Honor. The United  
6 States appears by Elizabeth Altman.

7 MR. JONES: Good afternoon, Your Honor. Mr. Tjader is  
8 here in person and with his attorney, William Jones.

9 THE COURT: Good afternoon, all.

10 We are here for a sentencing of David Tjader --

11 THE DEFENDANT: Tjader.

12 THE COURT: Tjader. Thank you. And my first  
13 obligation, Mr. Tjader, is to ask whether you've had an  
14 opportunity to read and discuss the presentence report and the  
15 addendum and revised presentence report with your counsel?

16 THE DEFENDANT: One second. Was the revised one what  
17 we just went over?

18 MR. JONES: Yeah.

19 THE DEFENDANT: Okay. Yes.

20 THE COURT: Thank you. Then I'll ask the government if  
21 there was an additional motion -- or a motion for an additional  
22 one-level reduction for acceptance of responsibility?

23 MS. ALTMAN: Yes, Your Honor.

24 THE COURT: Also, if you could advise me, Ms. Altman,  
25 whether or not there were any victims who wished to speak.

1 MS. ALTMAN: There are no victims that wish to speak,  
2 Your Honor. We did comply with our notification obligations.

3 THE COURT: Understood. And I saw that you filed under  
4 seal victim statements.

5 With that, I will accept the plea agreement finding that  
6 the offense of conviction adequately reflects the defendant's  
7 criminal conduct and the plea agreement does not undermine the  
8 statutory purposes of sentencing. In determining the  
9 defendant's sentence, I will take into consideration the  
10 advisory sentencing guidelines and be governed by the statutory  
11 purposes of sentencing that is set forth at Section 3553(a) of  
12 Title 18.

13 While the government had no objections to the presentence  
14 report, the defendant raised an objection to the number of  
15 images included in the guideline calculation, asserting that  
16 because devices seized from the defendant's residence were not  
17 in working order, the images found on these computers should not  
18 be considered for relevant conduct. Further clarification from  
19 the case agent, however, indicates that these devices were not  
20 only operable but were actually navigable and that images found  
21 on the devices were easily accessible by a user. Moreover, they  
22 reflect what would have been viewed in the past, and I don't see  
23 any reason to exclude them. Therefore, the defendant would have  
24 been able to access these images at any time or at least at some  
25 period of time, and they accurately are considered for purposes

1 of determining relevant conduct.

2 The defendant further asserts that a downward departure is  
3 warranted for a number of the images used because the  
4 video-to-image conversion utilized by the guideline is arbitrary  
5 and overstates the quantity of images involved in the offense.  
6 The Court further recognizes that this calculation can overstate  
7 the severity of the defendant's conduct, and it will consider  
8 this when determining the appropriate sentence. At the same  
9 time, it will consider that there may have been live visual  
10 depiction of particularly horrific form as well.

11 The defendant also raised several objections regarding the  
12 language used in the presentence report claiming it misleads the  
13 reader in making false assumptions about the defendant.  
14 Similarly, the defendant objected to the use of the information  
15 provided by the defendant to the polygraph examiner. However,  
16 the defendant's statements and information provided are  
17 appropriate to consider, not only because they were included in  
18 the investigative materials but because they represent  
19 information willingly provided to investigators by the  
20 defendant. Moreover, the defendant's success on supervision  
21 depends on his willingness to address his specific risks and  
22 treatment needs and to ensure that he will not be a danger to  
23 the community upon his release from prison. The defendant's  
24 statements have been noted in the report. However, I believe  
25 the information from investigative materials were appropriately

1 included as well.

2 Finally, the defendant raised several objections to the  
3 proposed special conditions of supervised release numbered 12,  
4 13, 14, 16, and 19. Justification for those conditions will be  
5 addressed following the imposition of sentencing today. All of  
6 the imposed conditions address risks that are occasioned by the  
7 offense of conviction and the defendant's personal history and  
8 characteristics.

9 Accordingly, I find the probation office has calculated the  
10 advisory guidelines correctly using the current manual and  
11 supplement and taking into account all relevant conduct under  
12 Section 1B1.3. The guideline for receipt of child pornography  
13 in violation of Section 2252(a)(2) of Title 18 is found at  
14 Section 2G2.2. Under subsection 2(a)(2), the base offense level  
15 is 22.

16 However, under subsection 2(b)(1), two levels are removed  
17 because there is no evidence to suggest that the defendant  
18 intended to further traffic or distribute the images and videos  
19 that he received.

20 In contrast, two levels are added under subsection 2(b)(2)  
21 because one image and two videos retrieved from the defendant's  
22 email contain minor females ranging in age from 6 to 12 years.

23 Under subsection 2(b)(4), four levels are also added  
24 because some of the materials portray bondage, sadism, and  
25 violent sexual abuse or exploitation of an infant or toddler.

1           Two more levels are added because the defendant utilized  
2           his computer and various online accounts and servers to receive  
3           child pornography under subsection 2(b)(6).

4           Finally, under subsection 2(b)(7)(D) and comment note 6(B),  
5           five levels are added because the offense involved 138 images  
6           and 118 videos, nearly 9,000 images in total.

7           No other Chapter Two adjustments apply, and while the Court  
8           will consider the totality of defendant's conduct when  
9           determining if further reduction should be granted under Section  
10          5K2.0 for enhancement for the number of images possessed or  
11          received under 2G2.2(b)(7), the defendant has viewed child  
12          pornography for an extended period. He admitted beginning to  
13          view child pornography as early as 2002 with some interruptions.  
14          Much more disturbing to the Court, investigative material  
15          suggests he solicited certain kinds of graphic and live images  
16          of sexual abuse of minors, including images in exchange for  
17          payment. Given this active promotion of the creation of  
18          horrific child pornography as well as the number of images on  
19          devices in his possession at the time of the search warrant, a  
20          five-level increase, I believe, is warrant.

21          Accordingly, while the defendant did not qualify for  
22          enhancement for a pattern of conduct under 4B1.5, neither does  
23          his criminal history underrepresent under Section 4A1.3.  
24          Therefore, no further adjustments are warranted for images,  
25          although I will, as I've said, consider the totality of the

1 circumstances under Section 3553(a).

2 The defendant does qualify for a three-level downward  
3 adjustment under Section 3E1.1 because he demonstrated  
4 acceptance of responsibility for his offense and the government  
5 has moved for the additional reduction.

6 With a total offense level of 20 [verbatim] and a criminal  
7 history category of I, therefore, the defendant would ordinarily  
8 have an advisory guideline imprisonment range of 97 to 121  
9 months. However, as has been the practice of this court, the  
10 guideline calculation is affected by the enhancement for use of  
11 a computer required in this type of an offense, which adds two  
12 levels. This warrants a departure under 5K2.0 as a matter of  
13 standard practice in this court to achieve parity with others  
14 similarly situated to the offender, although the government is  
15 quite correct to point out the interactive nature of some of the  
16 defendant's apparently live shows over computers, which  
17 differentiates his conduct and will be a factor the Court will  
18 also consider under Section 3553(a).

19 With this two-level downward departure, it leaves the  
20 defendant a total offense level of 28. Coupled with his  
21 criminal history category of I, the guideline imprisonment range  
22 here is 78 to 97 months, and that's where the Court will begin  
23 thinking about an appropriate sentence for this defendant.

24 Admittedly, some of the images and some of the texts from  
25 this defendant, no matter how the defense attempts to

1 characterize them as simply being provocative, are quite  
2 disturbing and justify a substantial sentence both out of  
3 concern for this defendant and particularly out of concern for  
4 protection of the public, but he is a first offender, and  
5 notwithstanding the government's reasonable argument that he may  
6 have been offending for some time, the fact is he's only been --  
7 he's never been convicted of a crime of any kind, and that is a  
8 factor I will consider along with what I think is inarguably his  
9 likely vulnerability while incarcerated.

10 And with that, I'll hear first from the government and then  
11 from the defendant.

12 MS. ALTMAN: I don't have anything to add to my  
13 sentencing memo, Your Honor.

14 THE COURT: Very good.

15 Mr. Jones, is there anything you want to add to your memo?

16 MR. JONES: I think I may have heard you say that after  
17 the adjustment, the removal of the use of computer, the  
18 guideline was 28. If I heard wrong -- I think you meant 18,  
19 unless you did say 18 and I misheard, but it's 18, criminal  
20 history I --

21 THE COURT: The offense level is 28. It was 30.

22 MR. JONES: Oh, okay. Thank you.

23 THE COURT: That's what I said was 28.

24 MR. JONES: Understood. I thought you said something  
25 about 20, criminal history I, but that --



1           THE COURT: No. He has a criminal history category of  
2 I and an offense level of 28 after reducing for the two computer  
3 points, which gives him a guideline range of 78 to 87 [verbatim]  
4 months.

5           MR. JONES: Okay. Thank you, Your Honor.

6           THE COURT: No, that's fine.

7           MR. JONES: I appreciate it. I just wanted to --

8           THE COURT: Anything else you want to add, Mr. Jones?

9           MR. JONES: Just -- I wrote a sentencing memo. I think  
10 that --

11          THE COURT: And I did read it with care.

12          MR. JONES: You obviously gave it some consideration  
13 based upon comments you've already made. It was my position  
14 that it does suggest that there may be more a search for  
15 shocking communication and interaction which was what was being  
16 sought versus the actual images, but that's, I guess,  
17 speculation. I can't really say what the anticipated reaction  
18 was. The reality is, as Mr. Tjader has come to hear multiple  
19 times -- I'm sure it's sinking in -- is it really doesn't  
20 matter. It could lead people to behavior, and I don't know that  
21 he fully had thought that through. That is just, I guess, the  
22 mitigating argument that I had provided to the Court.

23          I also point out that there's family statements of support.  
24 They suggest that, having observed him growing up, that he was  
25 in a healthy atmosphere, and I think that that suggests that

1 someone such as Mr. Tjader may have less of a road to  
2 rehabilitation and realization of the correct behavior in our  
3 community. He also demonstrated a good work history, lengthy,  
4 consistent employment, and good comments from his employer.

5 So I do rely primarily on the sentencing memo and my  
6 comments in there to advocate for a sentence of 60 months.

7 THE COURT: Mr. Tjader, is there anything you'd like to  
8 say before I render sentence?

9 THE DEFENDANT: I'm not good at public speaking. Yes.  
10 Give me a couple minutes.

11 THE COURT: Sure. Take the time you need.

12 It's not necessary that you speak. You certainly have a  
13 right to do so, and you can also ask statements be made on your  
14 behalf by your counsel. I'm happy to proceed on any basis you  
15 wish.

16 THE DEFENDANT: Your Honor -- sorry. Nervous habit.  
17 Your Honor, I am sorry about that, and I obviously need help  
18 but -- I have been -- since the day I was picked up, I have  
19 actually been trying to, if any way possible, help the FBI in  
20 anything if they need it, but they obviously don't need my help.

21 THE COURT: One of the interesting things about your  
22 case is how long you've been involved in online pornography.  
23 You seem to have sort of entered in about the same time that  
24 peer-to-peer or computer access was possible and have somewhat  
25 grown with the development in that you were involved in a fairly

1 sophisticated exchange of images from the Philippines.

2 THE DEFENDANT: You want to hear something even more  
3 interesting? Although I've had computers for a really long  
4 time, I don't know a lot about computers. I mean, I figured out  
5 how to use Limewire -- that's obvious -- but I didn't know how  
6 to -- like they told me Ares. Did I download Ares online?  
7 Probably. I don't remember using it ever. I've downloaded lots  
8 of programs that I maybe attempted to use a couple of times but  
9 couldn't figure them out and then just left them alone, but  
10 they're still on my computer.

11 THE COURT: But you also used some of those programs to  
12 reach into parts of the internet that are not easily accessed  
13 and to do so repeatedly.

14 THE DEFENDANT: If that's the case, that would have  
15 been accidental because, like I said, I'm not really good at use  
16 of computers, and I'm not sure what you're talking about by what  
17 parts of the internet are not easily accessible.

18 THE COURT: Your experience was mostly online through a  
19 Yahoo! account? What other methods did you use to communicate?

20 THE DEFENDANT: Oh, the Yahoo! account, I actually did  
21 not set that up. I was on -- well, it was Limewire. I used  
22 Yahoo! and Facebook. Facebook was just recent but --

23 THE COURT: And Gmail accounts and other email accounts  
24 of various kinds.

25 THE DEFENDANT: Yeah. But Yahoo! Messenger, I

1       couldn't -- I didn't set that up. I was on a legal site talking  
2       to somebody -- it was a legal adult website talking to somebody  
3       who on that site set it up for me. This is, I don't know,  
4       back --

5               THE COURT: And it's your representation to me that  
6       Limewire, the Asstr, the Ares, and the GigaTribe --

7               THE DEFENDANT: That what? What was that last one?

8               THE COURT: You're telling me you don't -- that someone  
9       else set up all of those for you?

10              THE DEFENDANT: No, no, just the Yahoo! Messenger. I  
11       didn't --

12              THE COURT: But you downloaded Limewire. You  
13       downloaded Asstr, the A-S-S-T-R site --

14              THE DEFENDANT: Asstr is just a website.

15              THE COURT: You downloaded Ares?

16              THE DEFENDANT: Ares? I might have. I don't remember.  
17       I don't know how to use it and never have.

18              THE COURT: And gained access to GigaTribe. You just  
19       don't recognize it as a name?

20              THE DEFENDANT: I have never even heard of GigaTribe  
21       that I know of. I might have downloaded --

22              THE COURT: These are some of the sites and programs  
23       that were on your computer. That's why I ask.

24              THE DEFENDANT: Like I said, I have downloaded lots of  
25       stuff onto my computer that I don't -- that I may have attempted

1 to use once or twice and never successfully used it, so I just  
2 gave up on it.

3 THE COURT: Some of these messages there's thousands of  
4 exchanges, so you were using something regularly.

5 THE DEFENDANT: Yeah. I used Yahoo! Messenger  
6 regularly up until --

7 THE COURT: Until you moved to Facebook.

8 THE DEFENDANT: Well, no. There was, like, four years  
9 between the two.

10 THE COURT: Understood.

11 THE DEFENDANT: Okay.

12 THE COURT: I'm saying you used Yahoo!, and then later  
13 you used Facebook.

14 THE DEFENDANT: Yes, yeah.

15 MR. JONES: Since we're getting into the details,  
16 Judge, the Facebook was set up among his friends for -- because  
17 they do a Dungeons & Dragons group, and they were just using it  
18 for chat, and actually the evidence is quite clear that this  
19 Santos McBride [verbatim] found his name through Facebook and  
20 started messaging him. So I just want to clarify that he didn't  
21 just hop on Facebook for that sole purpose.

22 THE DEFENDANT: Yeah.

23 THE COURT: And, Counsel, Ms. Altman, do you know  
24 whether this defendant used more sophisticated communication  
25 means than those we've just discussed? In other words, any

1 access through the dark side of the web through special  
2 software.

3 MS. ALTMAN: There's no indication of that, Your Honor,  
4 of using like an anonymizing program or anything like that.  
5 There's no evidence of that.

6 THE COURT: The other thing is that you were very  
7 specific in some of the things you asked for, and it's hard to  
8 imagine that that just came out of thin air. You obviously have  
9 a fascination with really disturbing images.

10 THE DEFENDANT: Talking about, yes. Watching, no.

11 THE COURT: But you got images back. I don't know how  
12 you can say "Watching, no."

13 THE DEFENDANT: Well, or live -- live demonstrations,  
14 no.

15 THE COURT: Well, then why are there the repeated  
16 requests for live demonstrations?

17 THE DEFENDANT: Nothing has come of it.

18 THE COURT: That's not what the text exchange says.  
19 The text exchange says that they could get it for you and that  
20 you sent money -- you sent over \$5,000 worth of money through  
21 Western Union for images, some of them apparently for live  
22 images, although those weren't preserved. It's hard -- you can  
23 understand why, when I'm trying to understand what happened  
24 here, it's hard to credit the notion that you didn't ask for and  
25 enjoy receiving and viewed some very disturbing images. And, I

1 mean, you've admitted your guilt here. I'm just trying to  
2 better understand what it is -- what conduct you engaged in, and  
3 your effort to minimize it as "It's just things I asked for"  
4 doesn't seem very credible.

5 I'm trying to find a reference to in your -- you attended  
6 camps as a child or did you also -- were you also attending  
7 camps as an adult?

8 THE DEFENDANT: Camp -- well, "camp" is misleading.  
9 The WCC, I don't know if you ever heard of it --

10 THE COURT: I have, yeah.

11 THE DEFENDANT: That's what she meant was WCC.

12 THE COURT: And when did you do that?

13 THE DEFENDANT: I want to say '95, somewhere around  
14 there.

15 THE COURT: And just for one year?

16 THE DEFENDANT: Yeah. It's a one-year -- well, you get  
17 a job. You only work for one year, unless you become a -- I  
18 don't remember what they call it but basically like a boss  
19 underneath the supervisor. Then you get another year.

20 THE COURT: All right. And so you did it for one year?

21 THE DEFENDANT: Yeah.

22 THE COURT: Is there anything else that you'd care to  
23 add before I render sentence?

24 MR. JONES: Could I just have one second?

25 THE COURT: Sure.

1 (Discussion held off the record between the defendant and  
2 Mr. Jones.)

3 MR. JONES: Judge, Mr. Tjader wanted me to explain to  
4 you that he recalls the first time he asked for something really  
5 shocking, there was kind of a pause, and nothing came of it, and  
6 that's why he was proceeding in these chats without a real  
7 compelling belief that many of these things that he was throwing  
8 out there would actually come to fruition. He just wanted to  
9 make that statement.

10 THE COURT: Did you want to clarify that?

11 THE DEFENDANT: I just -- one thing I wanted to add to  
12 it. The first time I did, actually I got kind of scared when  
13 there was a pause, and then she came back on. Nothing happened  
14 because I didn't want anything to happen like that. I wasn't  
15 thinking when I said it and just --

16 THE COURT: But then you proceeded to make lots of  
17 requests, and you got responses.

18 THE DEFENDANT: Yeah, but nothing came of it so --

19 THE COURT: I don't know what that means, "nothing came  
20 of it." Much came of it over time.

21 THE DEFENDANT: Okay. Responses came of it but --

22 THE COURT: You sent them \$5,000.

23 THE DEFENDANT: Yeah.

24 THE COURT: You must have gotten something for that.

25 THE DEFENDANT: I've gotten shows.



1 THE COURT: You've gotten lots of stuff, and apparently  
2 there's gaps as to live images.

3 THE DEFENDANT: Yeah.

4 THE COURT: You've thought through this to try to  
5 minimize it, but it doesn't come across as very credible.

6 THE DEFENDANT: And I've gotten shows, mostly adult,  
7 and nothing violent.

8 THE COURT: I don't know how you can say that with some  
9 of the images that are on your computer.

10 THE DEFENDANT: Well, for the live shows.

11 THE COURT: But the things you requested in the live  
12 shows were quite violent.

13 THE DEFENDANT: Yeah, but nothing -- but I got nothing  
14 violent.

15 THE COURT: I am prepared to render sentence. The  
16 defendant is a 44-year-old man before the Court for his first  
17 criminal conviction of any kind. He was an only child born to  
18 parents who reportedly were nurturing and held the defendant to  
19 reasonable, consistent expectations. Overall, he is described  
20 by his family as introverted and quiet but pleasant to be  
21 around. As a child, the defendant was engrossed in playing  
22 video games, and he continues to describe video games as his  
23 only passion in life. Although his mother has questioned the  
24 defendant's cognitive abilities throughout his life, he  
25 graduated from high school and has maintained stable employment

1 since. Nevertheless, the defendant has resided with his mother  
2 for the entirety of his life, primarily in the basement  
3 ostensibly because she is no longer able to care for the space  
4 herself. The defendant reports never having a meaningful  
5 romantic relationship, but he has sustained close relationships  
6 with his family and a few friends.

7 The defendant's criminal conduct is more egregious than  
8 what is typically seen in receipt of child pornography cases.  
9 In 2017, an ongoing investigation revealed the defendant had  
10 received images of child pornography from sources in the  
11 Philippines, including an individual from whom he requested  
12 specific, graphic child pornography images and live stream video  
13 in exchange for payment.

14 In October 2017, the defendant was arrested by case agents  
15 at his home in Maple, Wisconsin, where they seized computer  
16 equipment. As I've already indicated, a forensic analysis of  
17 that equipment determined the defendant's conduct involved 138  
18 images and 118 videos containing child pornography, even after  
19 accounting for duplicate images. The images depicted the sexual  
20 abuse of girls as young as infancy through the age of 14,  
21 including vaginal penetration. The defendant also admitted  
22 using several peer-to-peer programs. The defendant not only  
23 received child pornography through email and peer-to-peer  
24 programs but, as I've said, made specific requests for live  
25 stream videos that depicted the sexual abuse of children and

1 solicited images for payment. The defendant requested specific  
2 items to take place over live video, including a person having  
3 sex with a 6-year-old child, a child having sex with a dog,  
4 killing a young child, and injuring a female child's genitals.  
5 These requests were sadistic and abusive in nature. The  
6 defendant admitted to and demonstrated a pattern of behavior  
7 that spanned over 15 years, and given the graphic nature of some  
8 of his requests, it's hard to accept any explanation than the  
9 defendant's fascination, perhaps addiction, to frightening  
10 images.

11 Finally, the defendant agreed to participate in a polygraph  
12 examination, failing the relevant questions when asked if he had  
13 ever had sexual contact with a child. That is hardly definitive  
14 proof, but it is a further basis for concern by the Court.

15 Were it not for his first offender status and cognitive  
16 limitations, a sentence at the top of the guideline would seem  
17 in order. Taking into consideration the nature of the offense  
18 as well as the defendant's personal history and characteristics,  
19 I am persuaded that a custodial sentence in the middle of the  
20 guideline range is reasonable and no greater than necessary to  
21 hold the defendant accountable, protect the community, provide  
22 the defendant the opportunity for rehabilitative programs, and  
23 achieve parity with the sentences of similarly situated  
24 offenders.

25 As to Count 1 of the indictment, it is adjudged that the

1 defendant is committed to the custody of the Bureau of Prisons  
2 for a term of 84 months. I strongly recommend that he be placed  
3 in an institution capable of addressing both his vulnerable  
4 status and need for psychiatric and sex offender counseling. I  
5 also recommend that he be afforded prerelease placement in a  
6 residential re-entry center with work release privileges and  
7 ongoing sex offender programming.

8 Pursuant to the Sentencing Reform Act of 1984, the primary  
9 goals of supervised release are to assist defendant's transition  
10 into the community after a term of imprisonment and to provide  
11 rehabilitation. Supervision in this case will provide the  
12 defendant with needed correctional programming, including  
13 rehabilitative programs, to assist with community reintegration;  
14 afford adequate deterrence to further criminal conduct; and  
15 protect the public from further crimes perpetrated by the  
16 defendant.

17 In particular, the offense of conviction, having involved  
18 internet chats and communications with a third party in the  
19 Philippines from 2012 to 2014 in which he made specific requests  
20 for extreme child pornography, demonstrates the need to closely  
21 monitor his communications online, as do the long-term viewing  
22 habits of child pornography by this defendant and the cache of  
23 photos and videos found in his computer equipment, including  
24 long email -- or I'm sorry -- sizable email attachments. While  
25 the defendant denies having had physical sexual contact with a

1 child, the concern of the Court is that that may not be true  
2 and, in any event, that there is a risk to society with this  
3 defendant, further justifying the detailed supervision  
4 requirements of the Court. The defendant also will likely need  
5 extensive help reintegrating with society upon his release, even  
6 with his ability to maintain steady employment and share  
7 expenses. Accordingly, his term of imprisonment is to be  
8 followed by a ten-year term of supervised release.

9 In light of the nature of the offense and the defendant's  
10 personal history, I adopt conditions 1 through 4, 7 through 9,  
11 and 11 through 19 as proposed and justified in the presentence  
12 report. The defendant raised written objections to Conditions  
13 Nos. 12 through 14, 16, and 19 in the revised report. Similar  
14 objections have been raised before this court in the past and  
15 denied, most recently in *United States v. Robert Tlusty*. The  
16 Court notes that should circumstances or the law change before  
17 or during the defendant's term of supervised release, the  
18 defendant will certainly have an opportunity to address concerns  
19 of that nature to this court. In the meantime, I do overrule  
20 each of the objections for the following reasons:

21 As to Special Condition No. 12, financial monitoring  
22 conditions are certainly necessary based on the nature of the  
23 offense, including solicitation of images for payment. The  
24 probation office will need to monitor financial records of this  
25 defendant, including credit card statements for the purchase of

1 computer equipment, internet services, illicit materials, as  
2 well as to evaluate the defendant's characteristics or  
3 capability to make payments of treatment costs. The defendant's  
4 personal characteristics include outstanding debts and  
5 liabilities of over \$20,000. In addition, he will be required  
6 to pay not only the statutory assessment but ongoing state and  
7 federal income taxes during his supervision period. Since this  
8 financial monitoring condition is not overly burdensome and  
9 serves the statutory purposes of sentencing and rehabilitation,  
10 I do find it to be necessary and in compliance with -- to assure  
11 compliance with the defendant's legal and financial obligations.

12 Special conditions 13 and 14 are appropriate to deter the  
13 defendant from offense-related behaviors and to provide  
14 monitoring to ensure the safety of the community. Since the  
15 defendant previously communicated with others online in  
16 profoundly disturbing ways through file sharing and received  
17 child pornography using a computer, various forms of monitoring  
18 software will be necessary and may be installed on the computers  
19 of the defendant, including electronic devices, after he is  
20 released to supervision. Any electronic item seized from the  
21 defendant based on suspicion of contraband will also necessarily  
22 be subject to further forensic analysis. Currently there is no  
23 statutory provision under Section 3583(d) in which a time frame  
24 must be established to return these items, and I will not impose  
25 strict deadlines for the return of any property removed for

1 inspection during supervision. However, I will require that any  
2 property be returned as soon as possible after inspection unless  
3 the inspection is based on a reasonable suspicion that the  
4 property is or contains contraband. In that case, return of the  
5 property will be at the discretion of the supervising officer,  
6 and if opposed by the defendant, then he may seek release from  
7 this court.

8 Special Condition No. 16, while not recommended by the  
9 defendant, is a condition that includes Abel Screening and  
10 plethysmograph testing. This recommended condition is centered  
11 around treatment and polygraph testing to be used as a treatment  
12 tool. Although the test results are not admissible as evidence  
13 at trial, testing instruments may be used to assist the  
14 treatment provider with addressing offense behavior and to  
15 monitor the defendant to ensure community safety. Accordingly,  
16 use of such methods shall be at the treatment provider's  
17 discretion.

18 Finally, Special Condition No. 19 was objected to regarding  
19 the constitutionality of the sex offender registry as being  
20 overly broad. Given that this defendant has been convicted of  
21 child pornography, there is little evidence to conclude he is a  
22 child predator, but it remains a concern of this court, and,  
23 therefore, at this point, since registration is required by  
24 SORNA in both state and federal law, I am of the view that that  
25 registration should be mandatory under the conditions imposed by

1 the Court as well, if for no other reason than it may prevent  
2 any risk the defendant does pose to children.

3 If, when the defendant is released from confinement --  
4 well, I guess, Mr. Jones, there is a question for you at this  
5 point. I've justified the individual conditions that you've  
6 raised an objection to, but there remains some question as to  
7 whether I should read into the record each of the individual  
8 special conditions or conditions being imposed and justify each  
9 of them individually unless the defense wishes to waive my doing  
10 so, in which case I would incorporate the conditions verbatim as  
11 well as the individual justifications along with those that I've  
12 already set forth.

13 MR. JONES: Right. There's no need -- we would waive  
14 the reading of any justification of the additional conditions  
15 that we did not object to.

16 THE COURT: All right. And you have an understanding  
17 and you've reviewed the basic conditions with your client?

18 MR. JONES: Yes. Mr. Tjader had his PSR for some time  
19 and was able to review them and talk to me, so we've had plenty  
20 of time -- so he is aware of those conditions and their  
21 justification.

22 THE COURT: Mr. Tjader, the only additional thing about  
23 those conditions is when you're released, if you or the  
24 probation office or both believe that any of the conditions no  
25 longer are appropriate, you are welcome to come back to court,



1 and I would consider revisions to those conditions.

2 The instant offense is not drug related, and the defendant  
3 has no history of drug use. Therefore, the requirement for drug  
4 testing is waived under Section 3583(d).

5 It is adjudged the defendant is to pay a \$100 criminal  
6 assessment penalty to the Clerk of Court for the Western  
7 District of Wisconsin as required by statute. That is due  
8 immediately following sentencing.

9 But the defendant -- well, the defendant is to pay a  
10 mandatory restitution to the U.S. Clerk of Court for the Western  
11 District of Wisconsin. My understanding is that the parties  
12 have not yet agreed on a restitution amount, so pursuant to  
13 Section 3664(d)(5) of Title 18, I will hold a restitution  
14 hearing on September 7, 2018, at 1:00 p.m., although I encourage  
15 the parties to see if they can reach some understanding as to  
16 the amount before then.

17 I do find the defendant lacks the means to pay any further  
18 fine under Section 5E1.C -- 1.2(c) without impairing his ability  
19 to support himself upon release from custody.

20 I also find that he is indigent and that the \$5,000  
21 assessment under the Justice for Victims of Trafficking Act of  
22 2015 is waived.

23 A final order of forfeiture will also be issued under  
24 Section 2259 consistent with the parties' stipulation, but I  
25 will grant that order today as well.

1           Finally, the U.S. Probation Office is to notify local law  
2 enforcement agencies and the state attorney general of the  
3 defendant's release back to the community.

4           I believe there are two counts that need to be dismissed at  
5 this stage, Counsel?

6           MS. ALTMAN: Yes, Your Honor, Counts 2 and 3.

7           THE COURT: Counts 2 and 3 are dismissed, and, Mr.  
8 Tjader, my last obligation is to ensure that you understand that  
9 you have a right to appeal my sentence. You have been  
10 represented ably by Mr. Jones, and I'm confident that he would  
11 discuss possible grounds for an appeal as well as assist you in  
12 filing a notice of appeal if you wish to do so, but you only  
13 have 14 days, so you should have that conversation sooner rather  
14 than later.

15           I am hopeful that there may be some benefit to the  
16 programming that is available in the federal system. Your first  
17 few months in that system will be discombobulating. They'll be  
18 confusing because you'll be moved from various institutions, but  
19 I will note my strong recommendation that you end up in a  
20 facility that has an opportunity for real programming as well as  
21 is cognizant of the nature of the facility that is best for you.

22           THE DEFENDANT: Am I going to be here until the --

23           THE COURT: The restitution hearing?

24           THE DEFENDANT: Yeah, that thing.

25           THE COURT: That's an excellent question, and I don't

1 know the answer to that. You can participate by phone if the  
2 Bureau of Prisons decides to move you during this period, but we  
3 will address that down the road with counsel.

4 Is there anything more for the government at this time?

5 MS. ALTMAN: No, Your Honor. Thank you.

6 THE COURT: Anything more for the defense?

7 MR. JONES: No.

8 AGENT JOHNSON: Your Honor, could I just clarify one  
9 thing for the record? Special Condition No. 16, the probation  
10 office didn't recommend Abel Screening or plethysmograph  
11 testing, only the polygraph testing.

12 THE COURT: And that's what I noted, but I'm not going  
13 to restrict it. I'm going to allow the provider to determine  
14 what of those tests, if any, are appropriate for this defendant.

15 AGENT JOHNSON: Yes. Thank you, Your Honor.

16 THE COURT: Is there anything else?

17 MR. JONES: No.

18 MS. ALTMAN: No, Your Honor. Thank you.

19 THE CLERK: All rise. This court stands in recess.

20 (Proceedings concluded at 1:56 p.m.)

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1 I, JENNIFER L. DOBBRATZ, Certified Realtime and Merit  
2 Reporter in and for the State of Wisconsin, certify that the  
3 foregoing is a true and accurate record of the proceedings held  
4 on the 2nd day of July, 2018, before the Honorable  
5 William M. Conley, U.S. District Judge for the Western District  
6 of Wisconsin, in my presence and reduced to writing in  
7 accordance with my stenographic notes made at said time and  
8 place.

9 Dated this 17th day of July, 2018.

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15 \_\_\_\_\_/s/ Jennifer L. Dobbratz\_\_\_\_\_

16 Jennifer L. Dobbratz, RMR, CRR, CRC  
17 Federal Court Reporter  
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